its acquisition by the acquiring company was on the date of the agreement. I can find no merit whatsoever in this submission. I would reiterate that an agreement to sell and the completion of the sale are two different things. The acquisition of the source can only date from the date of the sale itself.

The alternative finding of the special commissioners, that if there was only one acquisition it did not take place until the last completion date, is criticised on the ground that if they were right it would be impossible to account for the income of the subsidiary company from the date of the first completion to the final completion date. As the deciding order of the special commissioners was not based on this alternative findings, I do not consider it necessary to answer what, to my mind, is a purely hypothetical question.

It is also argued that there is nothing inconsistent in having a cessation date for the appellant company which differs from the commencement date of the subsidiary. It is said that cessation and commencement are not necessarily related and that the one can occur without the other. This again is a question which does not call for an answer. I need only add that in the present case, in view of the terms and conditions of the agreement to sell, cessation and commencement must necessarily be taken to be related to each other.

The final argument is that whatever the position may have been as a matter of law *vis-a-vis* the appellants, if there was only one business which was the source of income, that source must have been acquired as such for the first and only time by the acquiring company on the date of the first completion date, namely, October 1, 1966. A short answer to that argument is that the business having been sold piecemeal on different dates, those were the dates of acquisition of each piece insofar as the acquiring company was concerned. It was on that basis that the special commissioners made their deciding order. In my judgment they were quite right in doing so.

For the reasons which I have stated I would answer in the affirmative the question of law which has been referred for the opinion of this court, namely, whether on the facts there is evidence to support the decision of the special commissioners. That being so, the appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Shearn, Delamore & Co.*

OLIVER YOUNG v. COLLECTOR OF LAND REVENUE, BATU PAHAT

[O.C.J. (Syed Othman J.) August 26, 1971]

[Muar — Land Reference No. 4 of 1968]

Land Laws — Compulsory acquisition — Objection against collector's award — Reference to court — Preliminary point of whether collector holding inquiry must also make the award — Land Acquisition Act, 1960, s. 12(1).

This was an objection against the award of compensation by the respondent.

Before the hearing commenced, a preliminary point was raised by counsel for the respondent, which was also supported by applicant's counsel, as to whether it was proper for one collector to hold the enquiry in the acquisition proceedings, and for another to make the award.

In this case, one assistant collector had made the enquiry and another had prepared the written award which was apparently based on "grounds of judgment", containing the assessment of compensation, which the former had prepared.

Held: (1) section 12(1) of the Land Acquisition Act, 1960, requires the collector to make full enquiry into the value of ail land and to assess the amount of appropriate compensation. These two requirements go together, and the collector who makes the enquiry must assess the compensation;

(2) in the circumstances of this case, the specific requirements of section 12(1) had not been complied with. Therefore, the assessment was invalid and there should be an enquiry *de novo* by another collector.

Observations on the functions of the collector under the Act.

Case referred to:-

(1) *MacDonald* v. *Secretary of State* 123 P.R. 1908; 19 P.L.R. 1909; 4 I.C. 914.

LAND REFERENCE.

Dato' Donald Carbis Jackson for the applicant.

Hamzah bin Mohamed Salleh (Legal Adviser, Johore) for the respondent.

Cur. Adv. Vult.

Syed Othman J.: On 15th October, 1966, the State Government commenced proceedings under the Land Acquisition Act, 1960 to acquire land held under four titles in Mukim Sri Gading, District of Batu Pahat, Johore, and registered in the names of four persons, one of whom was the applicant. On 8th February, 1967, an assistant collector of land revenue in Batu Pahat held an enquiry. The applicant gave evidence showing the date he had purchased the land, the price he had paid for it, the plan he had as regards the land *i.e.* to build houses for sale, the offer he had received for the purchase of a portion of the land from an oil company. I need not concern myself with the other owners as they subsequently accepted the sums which the Government offered as compensation for the acquisition. An appraiser also appeared before the assistant collector. He submitted his report on the valuation of the four pieces of land to be acquired.

On 9th October, 1967 another assistant collector made an award on the acquisition. The applicant being dissatisfied with the amount of compensation filed an objection against it on 14th November, 1967. This objection has now been referred to this court.

Before hearing could commence, Che' Hamzah,

the State Legal Adviser, appearing on behalf of the collector, asked the court for a ruling on a preliminary point. It is, as is apparent from the record, whether it was proper for one collector to hold the enquiry in the acquisition proceedings and for another to make the award. Citing an authority he submitted that the award was invalid and that there should be an enquiry *de novo* as the award had not been made by the same collector who had held the enquiry.

Dato Jackson, appearing on behalf of the applicant, was of the same view. He said in effect having regard to the provisions of section 12 and 13 of the Act, the same collector must hold the enquiry and make the award; but the applicant would waive any objection as there had been no injustice and the irregularity was merely procedural.

Che Hamzah in the course of his submission mentioned a ruling by Ismail Khan J. (as he then was) covering a similar point in a land reference case in Seremban. As the file was not available then, the matter was adjourned.

I have now before me the case file. In that case an officer gave evidence that he had held an inquiry in respect of the acquisition of a piece of land when he had been the assistant district officer in the district, and he had made the award on a subsequent date. In cross-examination, he admitted that he did not know the area where the land had been acquired; he had consulted the district officer who had suggested a figure for the award which he had accepted. He even admitted that the district officer had drafted the grounds of judgment which he had accepted. It is clear from the evidence of this officer, although he had held an enquiry the opinion relating to the value of the land had not been his but that of another officer and it was therefore held to the effect that the enquiry had not been proper. The facts of that case are somewhat different from those in the present case as appearing in the record.

The authority which has been cited in the present case is "Compulsory Acquisition of Land in India and Pakistan" by *Aggrawala* (third edition) where at page 104 in the paragraph under the heading "Validity of award based on instructions from office superiors", this statement appears:

"Under the Land Acquisition Act, The Collector is the *persona designata* to make the award. He is to make the award and none else."

It will be seen that under section 7 of the Indian Land Acquisition Act, 1894 whenever any land shall have been so declared for a public purpose ... the Provincial Government or some other officer authorized by the Provincial Government in this behalf shall direct the collector to take order for the acquisition of land. This provision relates to section 6 which provides for the declaration of acquisition. On the question of jurisdiction, the courts in India have held that where the Government by a notification under section 6 has authorized the deputy commissioner to take order for the acquisition of property, no other officer, not even a collector, appointed under the Act can make an award. This statement appears at page 81 of *Aggrawala* basing on *MacDonald* v. *Secretary of State*,[1] I have not been able to see the full report. But on the face of it, this ruling has been brought about by section 3 of the Indian Act which defines "Collector" to mean the collector of a district and includes a deputy commissioner and any officer specially appointed by the Provincial Government to perform the functions of a collector under the Act. I have underlined the words "specially appointed." From this provision the indications are that before an officer can act under the Indian Act he must have been specially appointed. It is therefore held that if the Provincial Government appoints a deputy commissioner to act the collector has no jurisdiction to act since he is not the person appointed to act. But I cannot see on the face of the Indian decision anything which can be interpreted to the extent that if a deputy commissioner (or for that matter a collector) is appointed another person holding the same office cannot act. It does not say that where a deputy commissioner is appointed to act, that particular officer must, and no other person holding the same office can, act throughout the proceedings. It should be observed that there is no provision in our Act as is in the Indian Act which requires an officer to be designated or specially appointed for the purpose of acquisition proceedings. Caution should therefore be exercised in applying the authorities under any provision of the Indian Act to our cases. I think it would be safer to interpret a provision in our Act on its own construction.

Section 2 of our Act defines "Collector" to mean any Collector of Land Revenue, Land Officer, District Officer or other officer appointed under the State land law and includes an assistant collector of land revenue or assistant district officer. From this definition and other provisions in the Land Acquisition Act, 1960 an officer can act for any of the purposes provided in the Act so long as he comes within the definition.

As to whether or not it is intended that the same collector should act throughout in land acquisition proceedings would, in my view, depend on the tenor and the construction of a particular provision. I have now to examine the relevant provisions.

Section 9 requires the collector to mark out the land and to make a note of the intended acquisition in a specified manner, upon the publication of a declaration under section 8.

Section 10 requires the collector after completing necessary action under section 9, to commence proceedings for the requisition of land by giving public notice in the prescribed form and manner and by fixing the date of inquiry for the hearing of claims to compensation for all interests in the land to be acquired.

Section 11 relates to the service of the public notice.

By section 12(1) on the day appointed under sub-section (1) of section 10 —

"the collector shall make full enquiry into the value of all scheduled lands and shall as soon as possible thereafter assess the amount of compensation which in his opinion is appropriate in each case according to the consideration set out in the First Schedule."

Sub-sections (2) and (3) of section 12 contain provisions incidental to sub-section (1) and have little

bearing to the case before me.

Section 13 gives the power of the court to the collector making the enquiry *i.e.* to summon witnesses, to administer oaths or affirmations and to compel the production and delivery of documents to him.

Sub-section (1) of section 14 requires that upon the conclusion of the enquiry under section 12 relating to any scheduled land the collector shall prepare a written award under his hand in the prescribed form. Sub-section (2) says that every award prepared under sub-section (1) shall be final and conclusive evidence of the area of any scheduled land, of its value in the opinion of the collector, and of the apportionment of the compensation awarded by the collector, whether the persons interested therein have or have not appeared at the enquiry.

From the scheme of the Act as provided in the foregoing sections, I am inclined to think that it is perfectly in order for one collector to take the action required under section 9 and for another to commence proceedings under section 10 and even for another to serve the public notice under section 11. These provisions are procedural in nature.

As regards the enquiry, it should be observed that the equivalent Indian provision, which is section 11 of the Indian Act, is different in wording from our section 12. The Indian provision requires the collector to enquire into the objections and value of the land and make an award. Our section 12(1) requires the collector to make full enquiry into the value of all land and to assess the amount of appropriate compensation. From the tenor and construction of this provision I am inclined to the view that these two requirements go together. The collector who makes the enquiry must assess the compensation. In the ordinary course of events I do not think a collector who does not make an enquiry is in a position to make any assessment. The preparation of the written award in Form G under section 14, to my mind, is consequential to the assessment of compensation. The indications are that it should be, and I cannot see any reason why it cannot be, prepared by the very collector who made the enquiry and assessed the compensation.

In the case here one collector made the enquiry. There is nothing to show that he assessed the compensation. Another collector prepared the written award which is apparently based on "grounds of judgment" which he had prepared. These grounds of judgment in effect contain assessment of compensation. It is clear that the collector, who had made the enquiry did not assess the compensation and prepare the written award, had not made any enquiry. The specific requirements of section 12(1) have clearly not been complied with. I therefore hold that the assessment is invalid. I am afraid I cannot see how I can treat the assessment as a mere irregularity as has been urged by Dato Jackson. Further, in this case the assistant collector who signed the grounds of judgment. has told the court that the grounds were written partly by him and partly by his senior officer, the collector. On this ground alone the assessment is invalid. I am now informed that the assistant collector who conducted the enquiry has been transferred elsewhere. In view of this I order a new enquiry and assessment by another collector.

Before I leave I wish to make two observations. First: It is not necessary for a collector making an enquiry under the Act to give grounds of judgment as such. He is required to assess the compensation. The proper term to use is therefore "assessment of compensation".

Secondly: During the enquiry, a valuation officer appeared on behalf of the Government. But he did not give any evidence. He requested the inquiring collector to allow him to study the valuation report submitted by the appraiser on behalf of the owners of the land. The collector's notes do not show that the valuation officer appeared again. He subsequently sent a letter to the collector under confidential cover criticising the valuation of the appraiser and a letter produced by the solicitor appearing on behalf of the applicant during the enquiry. There is no indication that the owners knew anything about this "confidential" letter. No doubt according to the authorities, an enquiry of this nature is departmental in character and is made for the purpose of enabling the collector to arrive at the market value of the land and in forming his opinion he may make use of materials which were not before him in evidence. Still I feel that in any enquiry, the enquiring officer should conduct himself with absolute impartiality. In this case the valuation officer was given the advantage of criticising the land owners, but the owners were not given the same advantage of criticising his report. I feel sure if there had been an equal opportunity of criticism, it would have helped the collector more in arriving at a decision. I would urge upon the collector to desist from the procedure followed in this case.

The assessors concurred.

Order accordingly.

Solicitors: *Jackson & Masacorale.*